

§ 157.35

in the State of Alaska named in paragraph (c)(19) of this section will be prohibited from obtaining information about the conduct of the open season or allocation of capacity that is not posted on the “open season” Internet website or that is not otherwise also available to the general public or other participants in the open season.

(d) *Timing.* (1) A prospective applicant must provide prospective shippers at least 90 days from the date on which notice of the open season is given within which to submit requests for transportation services. No bid shall be rejected because a prospective shipper has submitted another bid in another open season conducted under this subpart.

(2) A prospective applicant must consider any bids tendered after the expiration of the open season by qualifying bidders and may reject them only if they cannot be accommodated due to economic, engineering, design, capacity or operational constraints, or accommodating the request would otherwise adversely impact the timely development of the project, and a detailed explanation must accompany the rejection. Any bids tendered after the expiration of the open season must contain a good faith showing, including a statement of the circumstances which prevented the late bidder from tendering a timely bid and how those circumstances have changed. If a prospective applicant determines at any time that, based on the criteria stated in this paragraph, no further late bids for capacity can be accommodated, it may request Commission approval to summarily reject any further requests.

(3) Within 10 days after precedent agreements have been executed for capacity allocated in the open season, the prospective applicant shall make public on the Internet and through press releases the results of the open season, at least including the name of the prospective shipper, amount of capacity awarded, and term of agreement.

(4) Within 20 days after precedent agreements have been executed for capacity allocated in the open season, the prospective applicant must submit copies of all such precedent agreements to the Commission and copies of any relevant correspondence with bidders for

18 CFR Ch. I (4–1–10 Edition)

capacity who were not allocated capacity that identifies why such bids were not accepted (all documents identified in this paragraph (d)(4) may be filed under confidential treatment pursuant to §388.112 of this chapter if desired).

[Order 2005, 70 FR 8286, Feb. 18, 2005, as amended by Order 2005–A, 70 FR 35026, June 16, 2005]

EFFECTIVE DATE NOTE: At 75 FR 15342, Mar. 29, 2010, §157.34 was amended by revising paragraphs (c)(19), (20), and (21), effective Apr. 28, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 157.34 Notice of open season.

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(c) * * *

(19) A list of the names and addresses of the prospective applicant's affiliated sales and marketing units and affiliates involved in the production of natural gas in the State of Alaska. Affiliated unit means “Affiliate” as defined in §358.3(a) of this chapter. Marketing units and or affiliates are those conducting a “marketing function” as defined in §358.3(c) of this chapter, except that the exemption in §358.3(c)(2)(iii) shall not apply;

(20) A comprehensive organizational chart showing:

(i) The organizational structure of the prospective applicant's parent corporation(s) with the relative position in the corporate structure of marketing and sales units and any affiliates involved in the production of natural gas in the State of Alaska.

(ii) The job titles and descriptions, and chain of command for all officers and directors of the prospective applicant's marketing and sales units and any affiliates involved in the production of natural gas in the State of Alaska; and

(21) A statement that any officers and directors of the prospective applicant's affiliated sales and marketing units and affiliates involved in the production of natural gas in the State of Alaska named in paragraph (c)(19) of this section will be prohibited from obtaining information about the conduct of the open season or allocation of capacity that is not posted on the open season Internet Web site or that is otherwise also available to the general public or other participants in the open season.

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§ 157.35 Undue discrimination or preference.

(a) All binding open seasons shall be conducted without undue discrimination or preference in the rates, terms

or conditions of service and all capacity allocated as a result of any open season shall be awarded without undue discrimination or preference of any kind.

(b) Any complaint filed pursuant to § 385.206 of this chapter alleging non-compliance with any of the requirements of this subpart shall be processed under the Commission's Fast Track Processing procedures contained in § 385.206(h).

(c) Each prospective applicant conducting an open season under this subpart must function independent of the other divisions of the prospective applicant as well as the prospective applicant's Marketing and Energy affiliates as those terms are defined in § 358.3(d) and (k) of the Commission's regulations. In instances in which the prospective applicant is not an entity created specifically to conduct an open season under this subpart, the prospective applicant must create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the project applicant's Marketing and Energy affiliates as those terms are defined in § 358.3(d) and (k) of the Commission's regulations.

(d) Each project applicant conducting an open season under this subpart that is not otherwise subject to the provisions of part 358 of this chapter must comply with the following sections of that part: Sections 358.4(a)(1) and (3); 358.4(e)(3), (4), (5), and (6); 358.5(a), (b), (c)(3) and (5); and 358.5(d). The exemptions from § 358.4(a)(1) and (3) set forth in § 358.4(a)(4), (5), and (6) of this chapter also apply to each project applicant conducting an open season under this subpart.

[Order 2005, 70 FR 8286, Feb. 18, 2005, as amended by Order 2005-A, 70 FR 35026, June 16, 2005]

EFFECTIVE DATE NOTE: At 75 FR 15342, Mar. 29, 2010, § 157.35 was amended by revising paragraphs (c) and (d), effective Apr. 28, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 157.35 Undue discrimination and preference.

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(c) Each prospective applicant conducting an open season under this subpart must function independent of the other divisions of the prospective applicant as well as the prospective applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) and (c) of the Commission's regulations, except that the exemption in § 358.3(c)(2)(iii) shall not apply. In instances in which the prospective applicant is not an entity created specifically to conduct an open season under this subpart, the prospective applicant must create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the project applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) of this chapter, except that the exemption in 358.3(c)(2)(iii) shall not apply.

(d) Each project applicant conducting an open season under this subpart that is not otherwise subject to the provisions of part 358 of this chapter must comply with the following sections of that part: §§ 358.4(c) and (d), 358.5, 358.6, 358.7(a), (b), and (c), and 358.8 (b) and (c) of this chapter.

§ 157.36 Open seasons for expansions.

Any open season for capacity exceeding the initial capacity of an Alaska natural gas transportation project must provide the opportunity for the transportation of gas other than Prudhoe Bay or Point Thomson production. In considering a proposed voluntary expansion of an Alaska natural gas pipeline project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that some portion of the expansion capacity be allocated to new shippers willing to sign long-term firm transportation contracts, including shippers seeking to transport natural gas from areas other than Prudhoe Bay and Point Thomson.

[Order 2005-A, 70 FR 35026, June 16, 2005]

§ 157.37 Project design.

In reviewing any application for an Alaska natural gas pipeline project, the Commission will consider the extent to which a proposed project has been designed to accommodate the needs of shippers who have made conforming bids during an open season, as